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**NOV 27 1996**

Federal Communications Commission  
Office of Secretary

November 27, 1996

Mr. William F. Caton  
Acting Secretary  
Federal Communications Commission  
1919 M Street, N.W.  
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL


Re: In the Matter of Implementation of Section 255 of the  
Telecommunications Act of 1996: Access to Telecommunications  
Equipment, and Customer Premises Equipment by Persons with  
Disabilities, WT Docket No. 96-198

Dear Mr. Caton:

Pursuant to Paragraph 41 of the Notice of Inquiry in the above  
captioned matter, enclosed please find an original and nine copies of the Reply  
Comments of the Information Technology Industry Council. Please date stamp  
the additional copy and return it with our messenger.

If you have any questions regarding this filing, please do not  
hesitate to call.

Sincerely,



Janine F. Goodman

Enclosures

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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Federal Communications Commission  
Office of Secretary

In the Matter of )

Implementation of Section 255 of the )  
Telecommunications Act of 1996 )

WT Docket No. 96-198

Access to Telecommunications Services, )  
Telecommunications Equipment, and )  
Customer Premises Equipment By )  
Persons with Disabilities )

**REPLY COMMENTS OF  
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

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Counsel for the Information Technology Industry Council

November 27, 1996

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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By Persons with Disabilities	)	
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**REPLY COMMENTS OF  
THE INFORMATION TECHNOLOGY INDUSTRY COUNCIL**

**INTRODUCTION**

The Information Technology Industry Council ("ITI") submits these Reply Comments in accordance with the Commission's *Notice of Inquiry*<sup>1</sup> ("NOI") in the docket captioned above. As detailed in its Comments in this docket, ITI's members produce a wide variety of information technologies and equipment targeted to the needs of individuals with disabilities.<sup>2</sup> ITI urged the Commission and the Architectural and Transportation Barriers Compliance Board ("Access Board") to develop guidelines under Section 255 of the Telecommunications Act

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<sup>1</sup> *In the Matter of Implementation of Section 255 of the Telecommunications Act of 1996, Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons with Disabilities*, WT Docket No. 96-198, Notice of Inquiry (rel. September 19, 1996) ("NOI").

<sup>2</sup> Section 255 applies to "telecommunications equipment" and equipment used as "customer premises equipment" ("CPE") within the meaning of the Act. ITI uses the term "equipment" in these Reply Comments to refer to both types.

of 1996 (the "1996 Act") that serve the statute's goals without discouraging the innovation and technological diversity that have characterized information technology equipment markets and have benefited individuals with disabilities.

Thus, two key issues in the development of Section 255 guidelines are (1) the extent to which innovation and technological advances in equipment markets are resulting in the production of equipment responsive to the needs of individuals with disabilities; and (2) the deleterious impact that overly rigid guidelines or regulations would have on those marketplace forces. ITI's Comments demonstrated that the information technology equipment market is already producing a wide array of products responsive to the needs of individuals with widely differing disabilities. The Comments of other parties confirm this aspect of the information technology equipment market.<sup>3</sup>

As detailed in ITI's Comments, the information technology market currently produces equipment and technologies addressed to the particular needs of individuals with impairments in mobility, hearing, vision, information processing (e.g., dyslexia), and speech. Equipment manufacturers have designed and produced equipment such as specialized keyboards, specialized closed-circuit television systems, interactive reading systems for the vision and reading impaired, personal computers which become reading machines with translation capability or which respond to spoken commands, specialized

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<sup>3</sup> See, e.g., Microsoft Comments at 23; MCI Comments at 2; AT&T Comments at 6. As ITI noted in its comments, equipment used solely in connection with information or enhanced services, that is not also used to originate, route or terminate telecommunications within the meaning of the 1996 Act, is not subject to guidelines developed pursuant to Section 255.

message systems, and text telephones. Information technology equipment and software is available to enlarge computer screens, convert text to speech or speech to text, and generate visual images for sound cues.

Equipment manufacturers have recognized that solutions for some disabilities are incompatible with others. Individuals with disabilities can therefore be accommodated best by the “plug and play” approach, to which the information technology equipment market is rapidly moving. Under this approach, manufacturers produce a variety of independent components that users can purchase to assemble a system customized to their unique needs. A plug and play approach enables users to benefit from both the economies of scale associated with mass production and the flexibility possible with customized equipment configurations. At the same time, equipment manufacturers remain subject to the competitive pressures that stimulate innovative and cost-effective alternatives for individuals with disabilities.

Accordingly, ITI in its Comments urged the Commission to avoid rigid regulation that can chill the technological innovation in current information technology equipment markets. Like many commenters in this proceeding, ITI advocated extensive Commission participation in the Access Board’s deliberations and the development of flexible guidelines, not inflexible regulations. Guidelines are not only required by the clear language of Section 255 but are less likely to stifle experimentation, inhibit design and manufacturing processes, or increase their costs, as would regulations. Regulations capture

today's technologies and then effectively freeze technological progress by discouraging improvements or advances that fall outside the technological limits assumed by the regulations. Thus, regulations are an inappropriate means of protecting individuals with disabilities in a market characterized by rapid technological change.

ITI also urges the Commission to be an active partner to the Access Board throughout the process for developing these guidelines. Section 255 requires the Board to consider telecommunications and information technology products and markets with which it does not have experience commensurate with the Commission's. The statute in effect requires the Access Board to quickly familiarize itself with technologically complex and rapidly evolving industries. The Commission has unique and in-depth expertise in these areas. In order for the guidelines to be well-considered, and to complement rather than detract from the technological progress already driving these markets, the FCC must be an active and co-equal participant whose telecommunications and information technology expertise informs the deliberations over appropriate guidelines.

ITI agrees with the Comments of the Consumer Electronics Manufacturers Association ("CEMA") and Microsoft Corporation ("Microsoft"), who urged the Commission to advocate guidelines that focus on processes and mechanisms for communication between manufacturers and representatives of individuals with

disabilities, not the prescription of particular technical requirements.<sup>4</sup> The Access Board cannot address and resolve the needs of individuals with disabilities by erecting technical standards that will soon become outmoded by the technological churn of the equipment marketplace. The Board must instead ensure that appropriate processes and mechanisms are available to facilitate the exchange of information between representatives of individuals with disabilities and manufacturers. Industry-wide, voluntary mechanisms, rather than process specifications mandated by the FCC and the Board, would produce committed participants with a wide range of products and experience and would therefore best serve the interests of individuals with disabilities. Like ITI, Microsoft has advocated the creation of a clearinghouse database, which can be used both to assemble and disseminate information from manufacturers concerning equipment which addresses the needs of individuals with disabilities, and to collect information from individuals with disabilities. Through open dialogue and channels of communication between manufacturers and representatives of individuals with disabilities, equipment manufacturers can identify the needs and interests of individuals with disabilities and determine which of those can be addressed by their equipment.<sup>5</sup>

ITI also supports CEMA's proposal that, for manufacturers who have observed the Board's guidelines with respect to equipment introduced into the

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<sup>4</sup> CEMA Comments at 13-14; Microsoft Comments at 24.

<sup>5</sup> Microsoft Comments at 32.

marketplace, a grace period equal to the length of a production cycle will apply before the manufacturer is required to comply with new or revised guidelines with respect to that equipment.<sup>6</sup> Grace periods should vary according to the type of equipment and the nature of the design exercise (e.g., the introduction of a new product line versus updates of existing products). As noted by CEMA, it is inefficient and uneconomic to modify a production line before a production cycle ends. Without certainty regarding compliance during the production cycle, manufacturers would be discouraged from innovating or introducing beneficial product revisions.

ITI supports the Comments of Lucent Technologies regarding appropriate complaint procedures. In particular, ITI supports guidelines which would require potential complainants to first contact manufacturers for informal resolution of their concerns or problems. The Commission should then accept only those complaints which (a) demonstrate that the issues could not be resolved on an informal basis; (b) pertain to equipment for which the design process began at least six months after the publication of the guidelines (to ensure that manufacturers have had sufficient opportunity to review and incorporate the guidelines into their production processes); (c) "state with particularity" the accessibility barrier associated with the subject equipment; and (d) state a specific known solution to the accessibility barrier and demonstrate that the known solution would have been readily achievable at the time the design

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<sup>6</sup> CEMA Comments at 11.



activities for the equipment began.<sup>7</sup> The complaint procedures would also consider a manufacturer's efforts to adopt a process for addressing accessibility problems and incorporating readily achievable accessibility features in the initial design of a piece of equipment.<sup>8</sup>

Informal resolution of complaints is the most expedient and productive means of addressing the unmet needs of individuals with disabilities. The procedures advocated by Lucent encourage both parties to take actions that will defeat accessibility barriers as quickly as possible. They would give manufacturers strong incentives to implement preventive measures and continually work toward newer and better accessibility solutions, which in turn reduces the likelihood that complaints would be filed in the first place. Lucent's procedures would also discourage frivolous complaints, and encourage complainants to give manufacturers a fair opportunity to resolve compliance issues after they have been identified. Complaints should be the last avenue, and the marketplace should be the first, for ensuring compliance with Section 255.

Finally, enforcement actions against individual companies must take into account whether other manufacturers in the marketplace are producing equipment that meets the need identified by the complainant. So long as the market as a whole is producing equipment accessible to and usable by

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<sup>7</sup> Lucent Comments at 4-7.

<sup>8</sup> *Id.* at 6-7.

individuals with disabilities, when readily achievable, the purposes of Section 255 are served, regardless of whether the particular company who is the target of a complaint is producing such equipment. The statute does not require all companies to produce the same equipment or meet every need of individuals whose disabilities vary (and can require mutually exclusive solutions). Accordingly, the complaint procedures must specify that companies establish a complete defense to a Section 255 complaint if they demonstrate that the marketplace is producing equipment that meets the statutory standard for the needs identified by the complainant, even if the complainant does not.

### **CONCLUSION**

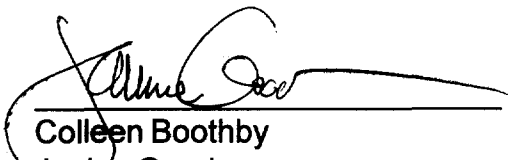
The record produced in this proceeding demonstrates that the information technology equipment market is already producing a diverse array of equipment that meets the needs of individuals with varying disabilities. The Commission and the Access Board should develop guidelines that will protect the interests of individuals with disabilities by encouraging technological innovation, facilitating communication between manufacturers and representatives of individuals with disabilities, and encouraging efficient dispute resolution.

In this way, the Commission can best ensure that the objectives of Section 255 will be achieved.

Respectfully submitted,

Information Technology Industry  
Council

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November 27, 1996

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## **Certificate of Service**

I, Noel Manalo, hereby certify that true and correct copies of the preceding Reply Comments of the Information Technology Industry Council in the Matter of Implementation of Section 255 of the Telecommunications Act of 1996: Access to Telecommunications Services, Telecommunications Equipment, and Customer Premises Equipment By Persons with Disabilities, WT Docket No. 96-198, were served this 27th day of November, 1996 via hand delivery upon the following:

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Noel Manalo

November 27, 1996

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